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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

GARY DESKINS, KUSUM DESKINS,)	CASE NO.
individually and as guardian)	
ad litem for Ashoka Deskins;)	
ASHOKA DESKINS, a minor, by and)	
through his guardian ad litem,)	
Kusum Deskins,)	<u>COMPLAINT FOR DAMAGES</u>
)	(42 U.S.C. §1983;
Plaintiffs,)	Supplemental state
)	Claims)
vs.)	<u>JURY TRIAL DEMANDED</u>
)	
CITY OF OAKLAND, a municipal)	
corporation; RICHARD WORD,)	
individually and in his capacity)	
as Chief of Police for the City)	
of Oakland; MATT MCGIFFERT,)	
individually and in his capacity)	
as a police officer for the City)	
of Oakland; OFFICER ESTRADA,)	
individually and in his capacity)	
as a police officer for the City)	
of Oakland; DOES 1-100,)	
inclusive,)	
)	
Defendants.)	

JURISDICTION

1 1. This action arises under 42 U.S.C. §§1983, 1985,
2 and 1986. Jurisdiction is based on 28 U.S.C. §§ 1331 and 1343.

INTRADISTRICT ASSIGNMENT

3 2. The claims alleged herein arose in the City of
4 Oakland, State of California. Therefore, venue and assignment
5 lies in the United States District Court for the Northern
6 District of California, San Francisco or Oakland Division. 28
7 U.S.C. Section 1391(b)(2).

PARTIES

8 3. Plaintiff, GARY DESKINS, is an African American
9 male citizen of the United States.

10 4. Plaintiff, KUSUM DESKINS, is a Fijian Indian
11 female. Plaintiff KUSUM DESKINS brings this action on her own
12 behalf and as guardian ad litem for Ashoka Deskins, a minor.

13 5. Plaintiff, ASHOKA DESKINS, is a minor and is an
14 African American male citizen of the United States and brings
15 this action through his guardian ad litem and mother, KUSUM
16 DESKINS.

17 6. Defendant CITY OF OAKLAND is, and at all times
18 herein mentioned was, a municipal corporation duly organized and
19 existing under the laws of the State of California.

20 7. Defendant RICHARD WORD, is, and at all times
21 herein mentioned was, the Chief of Police for the City of Oakland
22 Police Department. Defendant WORD is sued in his individual and
23 official capacities.

1 8. Plaintiffs are informed and believe and thereon
2 allege that Defendant MATT McGIFFERT was, at all times mentioned
3 herein, a police officer employed by Defendant CITY OF OAKLAND.
4 Defendant McGIFFERT is sued in his individual and official
5 capacities.

6 9. Plaintiffs are informed and believe and thereon
7 allege that Defendant OFFICER ESTRADA was, at all times mentioned
8 herein, a police officer employed by Defendant CITY OF OAKLAND.
9 Defendant ESTRADA is sued in his individual and official
10 capacities.

11 10. Plaintiffs are ignorant of the true names,
12 capacities and employers of Defendants sued herein as DOES 1
13 through 100, inclusive, and therefore sues said defendants by
14 such fictitious names. Plaintiffs will amend this complaint to
15 allege their true names and capacities when ascertained.
16 Plaintiffs are informed and believe, and upon such information
17 and belief allege that each of the Doe defendants is legally
18 responsible and liable for the incident, injuries and damages
19 hereinafter set forth, and that each of said defendants
20 proximately caused said incidents, injuries and damages by reason
21 of their negligence, breach of duty, negligent supervision,
22 management or control, violation of constitutional rights,
23 violation of public policy, unreasonable search and seizures,
24 trespass, false arrests, or by reason of other personal,
25 vicarious or imputed negligence, fault, or breach of duty,
26 whether severally or jointly, or whether based upon agency,

1 employment, ownership, entrustment, custody, care or control or
2 upon any other act or omission. Plaintiffs will ask leave to
3 amend this complaint to insert further charging allegations when
4 such facts are ascertained.

5 11. In doing the acts alleged herein, Defendants, and
6 each of them, acted within the course and scope of their
7 employment for the CITY OF OAKLAND and/or other public entities
8 to be ascertained.

9 12. In doing the acts and/or omissions alleged herein,
10 Defendants, and each of them, acted under color of authority
11 and/or under color of law.

12 13. In doing the acts and/or omissions alleged herein,
13 Defendants, and each of them, acted as the agent, servant,
14 employee and/or in concert with each of said other Defendants
15 herein.

16 STATEMENT OF FACTS

17 14. Plaintiffs are informed and believe and thereon
18 allege that on or about February 21, 2003, Defendant McGIFFERT
19 and/or Does 1-25 and/or each of them, individually and/or while
20 acting in concert with one another, presented an affidavit for
21 search warrant to the Alameda County Superior Court.

22 15. Plaintiffs are informed and believe and thereon
23 allege that said affidavit contained materially false and/or
24 erroneous information, including, but not limited to, false
25 information stating that illegal drugs were sold from the
26 Plaintiffs' home located at 3308 Chestnut Street, Oakland,

1 California, by a female by the name of "Tuti".

2 16. Plaintiffs are further informed and believe and
3 thereon allege that said materially false and/or erroneous
4 information also included a false claim that within 72 hours of
5 February 19, 2003, a controlled drug buy was made from "Tuti"
6 from the Plaintiffs' home and that a "confidential informant"
7 purchased illegal drugs from "Tuti" out of the Plaintiffs' home.

8 17. As a result of the materially false and/or
9 erroneous information contained in the search warrant affidavit
10 by Defendant McGIFFERT and/or Does 1-25 and/or each of them, a
11 search warrant was issued without reasonable or probable cause
12 for the Plaintiffs' home located at 3308 Chestnut Street,
13 Oakland, California.

14 18. Thereafter, on or about the early evening of
15 February 25, 2003, Plaintiffs Gary Deskins and his minor son,
16 Ashoka Deskins, were at their home located at or about 3308
17 Chestnut Street, Oakland, California.

18 19. Plaintiff Gary Deskins was outside the home and
19 Plaintiff Ashoka Deskins, was inside the home working on his
20 homework. Plaintiff Kusum Deskins, the wife of Gary Deskins and
21 mother of Ashoka Deskins, was out of the home at that time
22 because she was taking her daughter to a gymnastics lesson.

23 20. The Plaintiffs and/or each of them, are law-
24 abiding persons and do not traffic in crack cocaine and have
25 never allowed any third parties, including "Tuti," to sell, use
26 or distribute crack cocaine from their home.

1 21. On or about the early evening of February 25,
2 2003, Plaintiff Gary Deskins was unloading equipment from his
3 plumbing business truck in the driveway of the premises when he
4 heard a neighbor scream words to the effect, "You all have the
5 wrong house."

6 22. At that time, Plaintiff Gary Deskins noticed City
7 of Oakland Police Officers (Does 1-25 and/or each of them,
8 individually and/or while acting in concert with one another),
9 going up the stairs to his home. Plaintiffs are informed and
10 believe and thereon allege that said officers included, but were
11 not limited to, Defendants McGIFFERT, ESTRADA and/or Does 1-25
12 and/or each of them, individually and/or while acting in concert
13 with one another.

14 23. Plaintiff is informed and believes and thereon
15 alleges that the officers, and/or each of them, used a battering
16 ram or other device to break into the front door of his residence
17 where his minor son, Plaintiff Ashoka Deskins, was inside working
18 on his homework.

19 24. Plaintiffs are further informed and believe and
20 thereon allege that prior to breaking into the Plaintiffs' home,
21 Defendants, and each of them, failed to give the required "knock-
22 notice".

23 25. Plaintiff Gary Deskins was then handcuffed and
24 brought into the house by the officers. The police failed to show
25 Plaintiff Gary Deskins any warrant documents before he was
26 handcuffed.

1 26. Plaintiff Ashoka Deskins was detained inside the
2 home at gunpoint. After his father was brought into the home, by
3 the police, both father and son were ordered to sit on a sofa
4 while the officers searched the Plaintiffs' residence.

5 27. After the police detained Plaintiffs Gary Deskins
6 and Ashoka Deskins, Plaintiff Kusum Deskins arrived back at the
7 home and was also detained by the police. Plaintiff Kusum
8 Deskins requested permission to make a phone call while she was
9 being detained, but this request was denied by the officers.

10 28. While the Plaintiffs were detained, Plaintiff Gary
11 Deskins complained to the police that the handcuffs were too
12 tight and were causing damage to his hands and/or wrists.
13 Although the handcuffs were loosened, Plaintiff Gary Deskins
14 sustained swelling and bruising to his wrists.

15 29. Eventually, the officers stopped searching the
16 Plaintiffs' home, removed the handcuffs from Plaintiff Gary
17 Deskins and released him and the other Plaintiffs from custody.
18 At no time did the police find any drugs or evidence of narcotics
19 trafficking in the Plaintiffs' home.

20 30. Following this incident, Plaintiffs are informed
21 and believe and thereon allege that there were press reports
22 about the search and seizure that occurred at the Plaintiffs'
23 home. Plaintiffs are informed and believe and thereon allege
24 that said press reports contained false and defamatory statements
25 concerning the Plaintiffs allegedly made by members of the City
26 of Oakland Police Department.

1 31. The Plaintiffs filed a citizen's complaint with
2 the City of Oakland Citizen's Review Board on or about March 6,
3 2003. Plaintiffs are informed and believe and thereon allege
4 that Defendant Word, Defendant City of Oakland and/or Does 26-100
5 and/or each of them, have failed to take any or appropriate
6 remedial action as a result of this incident and/or have
7 ratified, authorized and/or condoned the conduct of their
8 subordinates who caused and/or participated in the unreasonable
9 search and seizure at the Plaintiffs' home.

10 32. Plaintiffs are informed and believe and thereon
11 allege that the subject incident was caused as a result of a
12 custom, policy, pattern and/or practice of deliberate
13 indifference to the constitutional rights of African Americans
14 and other minority citizens residing in West Oakland by the City
15 of Oakland, high ranking members of the City of Oakland Police
16 Department and by the officers involved in the subject incident.

17 33. Plaintiffs are informed and believe and thereon
18 allege that prior to this time, Defendant City of Oakland;
19 Defendant Word, and/or other high ranking City officials and
20 Police Department managers (Does 26-100) were on actual notice of
21 a custom, policy and practice by members of the City of Oakland
22 Police Department in which members of the City of Oakland Police
23 Department repeatedly falsified reports and/or fabricated other
24 evidence in connection with drug related investigations,
25 searches, detentions and/or arrests.

26 34. Plaintiffs are further informed and believe and

1 thereon allege that prior to this time, Defendant City of
2 Oakland, Defendant Word and/or other high ranking City officials
3 and Police Department managers (Does 26-100) were on notice of a
4 custom, policy and/or practice by members of the City of Oakland
5 Police Department to conduct unreasonable searches and/or
6 seizures in the homes of African Americans and/or other minority
7 citizens residing in West Oakland.

8 35. Plaintiffs are informed and believe and thereon
9 allege that prior to this time, Defendant City of Oakland,
10 Defendant Word, and/or other high ranking City officials and
11 Police Department Managers (Does 26-100) were on notice of a
12 custom, policy and/or practice by members of the Oakland Police
13 Department of claiming that they obtained reliable information
14 from "confidential informants" to justify searches and seizures
15 of citizens which they knew and/or reasonably should have known,
16 was not reliable, trustworthy or accurate.

17 36. Plaintiffs are informed and believe and thereon
18 allege that despite being on notice of said customs, policies
19 and/or practices, Defendant City of Oakland, Defendant Word,
20 and/or other high ranking City officials and Police Department
21 managers (Does 26-100) failed to take any or appropriate remedial
22 action to prevent or stop said customs, policies and/or practices
23 from continuing to occur.

24 37. Plaintiffs are further informed and believe and
25 thereon allege that their injuries and/or damages were caused as
26 a result of customs, policies, practices and/or procedures of

1 Defendant City of Oakland, Defendant Word, and/or other high
2 ranking City officials and Police Department Managers (Does 26-
3 100) who encouraged, authorized, condoned and/or ratified the
4 conduct that occurred in this case.

5 38. Plaintiffs are further informed and believe and
6 thereon allege that the acts and/or omissions of Defendants Word,
7 McGIFFERT, ESTRADA and/or Does 1-100 and/or each of them, caused
8 and/or contributed to the cause of the Plaintiff's injuries
9 and/or damages and did so intentionally, maliciously,
10 oppressively and/or with deliberate or reckless indifference for
11 the Plaintiffs' safety and/or constitutional rights. Therefore,
12 Plaintiffs are informed and believes and thereon alleges that
13 they and/or each of them, are entitled to recover punitive
14 damages in an amount to be determined according to proof.

15
16 CLAIMS FOR RELIEF

17 FIRST CLAIM FOR RELIEF

18 (42 U.S.C. SECTION 1983)
19 (AGAINST DEFENDANTS MCGIFFERT, ESTRADA, DOES 1-25)

20 39. Plaintiffs incorporate by reference and re-allege
21 herein Paragraphs 1 through 38.

22 40. In doing the acts complained of herein, Defendants
23 MCGIFFERT, ESTRADA, Does 1 through 25, individually and/or while
24 acting in concert with one another, did act under color of state
25 law to deprive Plaintiffs as alleged heretofore of certain
26

constitutionally protected rights, including, but not limited to:

(a) the right not to be deprived of liberty without Due Process of Law;

(b) the right to be free from unreasonable searches and seizures; and/or

(c) the right to Equal Protection of the Law.

41. Said rights are substantive guarantees under the Fourth and/or Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

SECOND CLAIM FOR RELIEF

(42 U.S.C. SECTION 1983)
(AGAINST DEFENDANTS CITY OF OAKLAND, WORD, DOES 26-100)

42. Plaintiffs incorporate by reference and re-allege herein Paragraphs 1 through 41.

43. As against Defendants CITY OF OAKLAND, WORD and/or DOES 26-100 and/or each of them, Plaintiffs further allege that the acts and/or omissions alleged in the Complaint herein are indicative and representative of a repeated course of conduct by members of the CITY OF OAKLAND Police Department tantamount to a custom, policy or repeated practice of condoning and tacitly encouraging unreasonable searches and seizures, denial of Equal Protection of the Law to African American and other minority citizens, abuse of police authority, and deliberate indifference to the violation of the constitutional

1 rights of citizens by members of the CITY OF OAKLAND Police
2 Department.

3 44. Plaintiffs are further informed and believe and
4 thereon allege that the acts alleged herein are the result of
5 the deliberate indifference of Defendants CITY OF OAKLAND, WORD,
6 DOES 26-100, and/or each of them, to repeated acts of police
7 misconduct which were tacitly authorized, encouraged or condoned
8 by the CITY OF OAKLAND, DOES 51-100, and/or each of them.

9 45. The injuries to the Plaintiffs were the
10 foreseeable and proximate result of said customs, policies,
11 patterns, practices and/or deliberate indifference of Defendants
12 CITY OF OAKLAND, WORD, DOES 26-100, and/or each of them.

13 46. Plaintiffs are further informed and believe and
14 thereon allege that the damages sustained as alleged herein were
15 the direct and proximate result of municipal customs and/or
16 policies of deliberate indifference in the training, supervision
17 and/or discipline of members of the CITY OF OAKLAND Police
18 Department.

19 47. Plaintiffs are further informed and believe and
20 upon such information and belief allege that Plaintiffs' damages
21 and injuries were caused by customs, policies, patterns or
22 practices of the CITY OF OAKLAND, WORD, DOES 26-100, and each of
23 them, of deliberate indifference in the training, supervision
24 and/or discipline of members of the City of Oakland Police
25 Department, including, but not limited to, Defendants McGIFFERT,
26 ESTRADA and/or DOES 1-25.

1 48. The aforementioned customs, policies, practices
2 and/or deliberate indifference of Defendants CITY OF OAKLAND,
3 WORD, DOES 26-100, and each of them, resulted in the deprivation
4 of Plaintiffs' constitutional rights including, but not limited
5 to, the following:

6 (a) the right not to be deprived of liberty without Due
7 Process of Law;

8 (b) the right to be free from unreasonable searches and/or
9 seizures; and/or

10 (c) the right to Equal Protection of the Law.

11 49. Said rights are substantive guarantees under the
12 Fourth and/or Fourteenth Amendments to the United State
13 Constitution.

14 WHEREFORE, Plaintiffs pray for relief as hereinafter set
15 forth.

16 THIRD CLAIM FOR RELIEF

17 (NEGLIGENCE)
18 (AGAINST ALL DEFENDANTS)

19 50. Plaintiffs incorporate by reference and re-
20 allege herein Paragraphs 1 through 49.

21 51. At the time of the incident alleged herein,
22 Defendants and/or each of them, owed Plaintiffs a duty to
23 exercise reasonable care to avoid foreseeable injury to the
24 Plaintiffs.

25 52. At and prior to the time of the subject
26 incident, Defendant CITY OF OAKLAND also owed Plaintiffs a

1 duty to use due and reasonable care in the hiring,
2 supervision, training and discipline of its police officers,
3 including, but not limited to, those involved in the subject
4 incident.

5 53. In doing the acts and/or omissions as alleged
6 heretofore in this Complaint, Defendants and/or each of them,
7 negligently breached their duty to use due and reasonable
8 care, resulting in foreseeable injuries and damages to the
9 Plaintiffs.

10 54. As a result of the negligence of the Defendants
11 and/or each of them, Plaintiffs suffered damages and injuries,
12 including, but not limited to, pain, suffering and emotional
13 distress.

14 55. Plaintiffs are informed and believe and thereon
15 allege that the negligent acts and/or omissions of Defendants
16 WORD, MCGIFFERT, ESTRADA, DOES 1-100 and/or each of them, as
17 alleged herein were done within the course and scope of their
18 employment with the CITY OF OAKLAND. As a result, the CITY OF
19 OAKLAND is also liable as respondeat superior for the acts
20 and/or omissions of its employees, agents and/or servants.

21 WHEREFORE, Plaintiffs pray for relief as hereinafter set
22 forth.
23
24
25
26

FOURTH CLAIM FOR RELIEF

(FALSE ARREST/FALSE IMPRISONMENT)

(DEFENDANTS CITY OF OAKLAND, McGIFFERT, ESTRADA, DOES 1-25)

56. Plaintiffs incorporate by reference and re-allege herein Paragraphs 1 through 55.

57. In doing the acts and/or omissions as alleged in this Complaint, Defendants McGIFFERT, ESTRADA, DOES 1-25 and/or each of them, individually and/or while acting in concert with one another, detained, arrested and/or imprisoned the Plaintiffs and/or each of them, without reasonable or probable cause to believe that they had committed any crime.

58. As a result of said unreasonable detention, false arrest and/or imprisonment, Plaintiffs suffered the damages and injuries alleged in this Complaint.

59. The acts and/or omissions of Defendants McGIFFERT, ESTRADA, DOES 1-25 and/or each of them as alleged herein were done within the course and scope of their employment with Defendants CITY OF OAKLAND. As a result, the CITY OF OAKLAND is also liable for said acts and/or omissions as respondeat superior.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

FIFTH CLAIM FOR RELIEF

(TRESPASS)

(AGAINST THE CITY OF OAKLAND, McGIFFERT, ESTRADA, DOES 1-25)

60. Plaintiffs incorporate by reference and re-

1 allege herein Paragraphs 1 through 59.

2 61. In doing the acts and/or omissions as alleged
3 herein, Defendants McGIFFERT, ESTRADA, DOES 1-25 and/or each
4 of them committed a trespass upon the Plaintiffs' residence.

5 62. As a result of said trespass, Plaintiffs
6 suffered the damages and injuries as alleged in this
7 Complaint.

8 63. At the time of said trespass, said Defendants
9 and/or each of them, acted within the course and scope of
10 their employment with Defendant CITY OF OAKLAND. As a
11 result, Defendant CITY OF OAKLAND is also liable as
12 respondeat superior.

13 WHEREFORE, Plaintiffs pray for relief as hereinafter set
14 forth.

15 SIXTH CLAIM FOR RELIEF

16 (CALIFORNIA CIVIL CODE SECTION 52.1)

17 (AGAINST THE CITY OF OAKLAND, WORD, McGIFFERT,
18 ESTRADA, DOES 1-100)

19 64. Plaintiffs incorporate by reference and re-
20 allege herein Paragraphs 1 through 63.

21 65. In doing the acts and/or omissions as alleged
22 herein, Defendants CITY OF OAKLAND, WORD, McGIFFERT, ESTRADA,
23 DOES 1-100 and/or each of them, individually and/or while
24 acting in concert with one another, caused the violation of
25 the Plaintiffs' rights under the California and/or United
26 States Constitution.

1 66. As a result of the violation of the Plaintiffs'
 2 constitutional rights, said Defendants and/or each of them,
 3 are liable for the Plaintiffs' actual damages, statutory
 4 damages, attorneys' fees and costs pursuant to California
 5 Civil Code Sections 52 and 52.1.

6 67. At the time of said constitutional violations,
 7 said Defendants and/or each of them, acted within the course
 8 and scope of their employment with Defendant CITY OF OAKLAND.
 9 As a result, Defendant CITY OF OAKLAND is also liable as
 10 respondeat superior.

11 WHEREFORE, Plaintiffs pray for relief as hereinafter set
 12 forth.

13 STATEMENT OF DAMAGES

14 68. Plaintiffs incorporate by reference and re-
 15 allege herein Paragraphs 1 through 67.

16 69. As a result of the acts and/or omissions of
 17 Defendants, and each of them, as alleged herein, Plaintiffs
 18 suffered the damages listed below:

19 a. General damages, including, but not limited to,
 20 past, present and future damages for pain, suffering,
 21 emotional distress, loss of liberty and invasion of privacy
 22 in amounts to be determined according to proof;

23 b. Special damages, including, but not limited to,
 24 medical and related expenses incurred by Plaintiff Ashoka
 25 Deskins;

26 c. Property damage in amounts to be determined

1 according to proof;

2 d. Statutory damages under California Civil Code
3 Sections 52 and 52.1;

4 e. The acts and/or omissions of Defendants WORD,
5 McGIFFERT, ESTRADA and/or DOES 1-100, and/or each of them,
6 were intentional, malicious, oppressive and/or done with a
7 conscious or reckless disregard for the rights of the
8 Plaintiffs. Accordingly, Plaintiffs pray for an award of
9 punitive and exemplary damages in amounts to be determined
10 according to proof.

11 70. Plaintiffs will also be entitled to an award of
12 attorneys' fees and costs pursuant to statute(s) in the event
13 that they are the prevailing party in this action under 42
14 U.S.C. Sections 1983 and 1988, California Civil Code Sections
15 52 and 52.1 and/or under other statutes and/or laws.

16 JURY TRIAL DEMAND

17 71. Plaintiffs hereby demand a jury trial.

18 COMPLIANCE WITH TORT CLAIMS ACT

19 Prior to commencing this litigation, Plaintiffs presented
20 a timely Tort Claim to the CITY OF OAKLAND. The CITY OF
21 OAKLAND rejected said Claim and this action is being filed
22 within six months of the date of said rejection.

23 PRAYER

24 WHEREFORE, Plaintiffs pray for judgment against
25 Defendants, and each of them, as follows:

26 1. General damages in amounts to be determined

1 according to proof;

2 2. Special damages, including, but not limited to,
3 medical and related expenses incurred by Plaintiff Ashoka
4 Deskins in amounts to be determined according to proof;

5 3. Property damage in amounts to be determined
6 according to proof;

7 4. Statutory damage pursuant to California Civil Code
8 Sections 52 and 52.1;

9 5. Punitive and exemplary damages in amounts to be
10 determined according to proof;

11 6. Attorneys' fees pursuant to statutes;

12 7. Costs of suit;

13 8. For prejudgment interest as permitted by law;

14 9. For such other and further relief as the Court may
15 deem just and proper.

16 CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

17 Pursuant to Civil L.R. 3-16, the undersigned certifies
18 that as of this date, other than the named parties, there is
19 no such interest to report.

20 DATED: August 4, 2003

21 _____
JAMES B. CHANIN
Attorney for Plaintiffs